?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 16.11.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

+W.P.(MD)No.88 of 2009
and
M.P.(MD)No.2 of 2009

#R.Sundararaju
... Petitioner
Vs.

$1.The State of Tamil Nadu
represented by the
Secretary to Government,
(Commercial Tax Department),
Fort St.George,
Chennai~600 009.

2.Deputy Registrar of Chits,
District Court campus,
Tiruchirapalli.

3.Cheran Chit Funds Private Limited,
represented by its Director,
S.Murugesan,
18 and 21, Madurai Road,
2nd Block,
Tiruchirapalli~8.

4.Anbalagan. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in G.O.(D)No.475 Commercial Taxes and Registration (K) Department dated 29.10.2008 and the second respondent dated 14.03.2007 in A.R.C.No.447/2004 and quash the same.

!For Petitioner : Mr.P.Jayaprakash Narayanan

^For R1 & R2 : Mr.K.Mu.Muthu
Government Advocate

For R3 : No appearance

For R4 : Mr.K.P.Narayanakumar

:ORDER

The third respondent was running a chit group. The fourth respondent was a subscriber. According to the third respondent, the petitioner herein had guaranteed the transaction in question. Since, the fourth respondent herein committed default, the third respondent filed an arbitration petition against him before the second respondent. The second respondent by order dated 14.03.2007 directed the fourth respondent to pay a sum of Rs. 57,800/~ with interest and also permitted the third respondent to proceed against the petitioner-s property. Questioning the order passed by the second respondent, the petitioner herein filed an appeal under Section 70 of the Chit Funds Act, 1982 before the first respondent. The said appeal was dismissed by the first respondent and the award passed by the second respondent was confirmed. Challenging the same, this writ petition has been filed.

2.Though, the third respondent is a contesting respondent and notice was taken on the said company, it appears that the third respondent has closed down its operations and its current whereabouts are not known. The petitioner has taken steps to have the notice served on the last known address of the third respondent.

3.The ground taken by the petitioner herein is that the arbitration petition should have been filed in time. In this case, the cause of action arose as early as on 09.04.1995. But then, the reference was made to the respondent with a gross delay of 1794 days. The reference was made only on 27.09.2004. From the very face of it, it is a time barred reference in terms of Section 65 of Chit Funds Act, 1982. The said provision reads as under:
?Section 65: Period of limitation:~
(1)Notwithstanding anything contained in the Limitation Act, 1963 (36 of -1963), but subject to the specific provisions contained in this Act, the period of limitation in the case of a dispute referred to the Registrar under Sec.64, shall.

(a) if the dispute relates to the recovery of any sum, including interest thereon, due to a foreman from a deceased subscriber, be three years, computed from the date on Which such subscriber dies or ceases to be a subscriber; or
(b) if the dispute is between a foreman and a subscriber or a past subscriber, or the nominee, heir or legal representative of a deceased subscriber, and the dispute relates to any act or omission on the part of either party to the dispute, be three years from the date on which the act or omission with reference to which the dispute arose, took place.

(2) The period of limitation in the case of any dispute other than those referred to in subsection (1)which are required to be referred to the Registrar under Sec.64 shall be regulated by the provisions of the Limitation Act, 1963 (38 of 1963), as if the dispute were a suit, and the registrar, a Civil Court.

(3) Notwithstanding anything contained in sub~section (1)and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period.?

4.It appears that in the present case, petition for condoning the delay was filed and the same was allowed without notice to the petitioner herein on the same day of filing. As rightly pointed out by the learned counsel for the petitioner, when a petition has been filed out of time, delay cannot be condoned without putting the other side on notice. This is because a valuable right has accrued in favour of the opposite party.

5.This aspect of the matter was not noted by the first respondent. The petitioner herein had taken this ground specifically. But the first respondent has chosen to brushaside the same.

6.Therefore, the order impugned in this writ petition is set aside and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

To

1.The Secretary to Government,
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(Commercial Tax Department),
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2.Deputy Registrar of Chits,
District Court campus,
Tiruchirapalli.